

**BUSINESS REPORT**

**MONTANA HOUSE OF REPRESENTATIVES  
61st LEGISLATURE - REGULAR SESSION**

**HOUSE NATURAL RESOURCES COMMITTEE**

**Date:** Wednesday, March 4, 2009  
**Place:** Capitol

**Time:** 3:00 pm  
**Room:** 472

**BILLS and RESOLUTIONS HEARD:**

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

SB 95, SB 102, SB 120, SB 201

\_\_\_\_\_  
\_\_\_\_\_

**EXECUTIVE ACTION TAKEN:**

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMENTS:**

  
\_\_\_\_\_  
REP. Mike Milburn, Chairman

# HOUSE OF REPRESENTATIVES

## Roll Call

### Natural Resources Committee

DATE: 3/4/2009

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Vice Chair Gordon Hendrick	✓	
Vice Chair JP Pomnichowski	✓	
Rep. Kendall Van Dyk	✓	
Rep. Michele Reinhart	✓	
Rep. Scott Mendenhall	✓	
Rep. Mike Miller	✓	
Rep. Betsy Hands <i>arr 3:30</i>	✓	
Rep. Brian Hoven	✓	
Rep. Anders Blewett	✓	
Rep. Tom McGillvray <i>arr 3:45</i>	✓	
Rep. Jill Cohenour	✓	
Rep. Gerald Bennett	✓	
Rep. Sue Dickenson <i>arr 3:04</i>	✓	
Rep. Tony Belcourt		✓
Rep. Chas Vincent <i>arr 4:35</i>	✓	<del>Excused</del>
Rep. Wendy Warburton	✓	
Rep. Mike Menahan <i>arr 3:04</i>	✓	
Chairman Mike Milburn		<del>Excused</del>

**MONTANA HOUSE OF REPRESENTATIVES  
VISITORS REGISTER**

**Natural Resources**

Date 3/4/09

PLEASE PRINT

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Name and Address	Representing	Bill No.	Support	Oppose	Inf.
Eugene Ruzi	DFC/pas	SB102			X
Brianna Randall	CFC	SB120 <sup>95</sup>	X		
Abigail St. Lawrence	Mont. Assn. Realtors	SB100	X		
Marty Hovan	BSB Water Div	SB102	X		
Donna Jensen	The Calmus Group	SB102	X		
GEORGE MATIAS	DGA	SB95	X		
Brian Sugden	Plum Creek	SB95	X		
Sergio M. Pelayo	DTST 21				
Bill Thompson	Hydrocarbons	SB95	X		
Robert Shee	MWRB	95	X		
Ronda Wiggers	Mt. Water Well Drillers	SB120	X		
Bye	SD2	120			
Mike Murphy	MWRB	SB120	✓		
Alec Housen	MLCT	SB-95	✓		
Tom Allen	LIFE TA	SB95	✓		
John Youngberg	MEBF	SB95	✓		
Krista Evans	AEAI	SB120	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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**Natural Resources**

**Date** 3/4/09

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Name and Address	Representing	Bill No.	Support	Oppose	Inf.
Chris Tweden	Res. Water & Conservation	201	✓		
"	At Home Environment		✓		
Jennifer Cole	Governor's Office	201	✓		
Cedric Bear Eagle	CROW NATION	201	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SB 120

Dear House Natural Resources Committee,

The Horse Creek Water Users, Inc. (HCWU) is the organizational structure for the Horse Creek Temporary Controlled Groundwater Area (TCGA), established on February 12, 2004 and located three miles southwest of Absarokee, MT. The study area includes approximately 7,600 acres of dry land range with numerous springs and wells (for ranch homes, livestock and the Crow Chief Meadows subdivision). An important spring fed stream known as Horse Creek flows through the region, providing water for irrigation, livestock and wildlife. Land ownership in the area was stable for decades but that changed in the late 1990's when a 480 acre parcel was subdivided into 67 lots, all requiring individual wells and septic systems. At present, two thirds of the lots in Crow Chief Meadows are sold and twenty houses have been built.

The Horse Creek Temporary Controlled Groundwater Area expired on February 13, 2006 because DNRC failed to sign an extension order on time. This "administrative oversight" was discovered in October 2008, following a second extension, years of water monitoring and \$80,000 in funds expended by the HCWU. HCWU attempted to reinstate the TCGA in Helena District Court but were unsuccessful. In December 2008, DNRC issued a draft report entitled /Ground Water Conditions in the Horse Creek Temporary Controlled Groundwater Area /and, following a comment period and review, the agency will issue a final report. It is unknown at this time whether the agency will implement or simply recommend controls on further groundwater development in the study area.

Because HCWU has yet to receive a "final agency action," comments on this bill are tempered somewhat but, we believe, should receive consideration in light of years of experience dealing with the controlled groundwater law and the Water Resources Division of DNRC.

\*SB120 turns the controlled groundwater law into a rules based process. \*Rulemaking authority is proposed throughout the bill. We believe that rules cut both ways and in some instances are appropriate and helpful, depending entirely on the agency making and enforcing the rules. Because our experience with DNRC's Water Resources Division has been characterized by confusion and mistrust, giving the agency unfettered rulemaking authority may completely eliminate transparency. We fear that legalistic machinations, not science, will be at the heart of every agency decision.

DNRC has had multiple challenges from controlled groundwater petitioners around the state, including the Horse Creek Water Users. This is likely why the agency is seeking to \*remove citizens from initiating a controlled groundwater petition in the first place. \*In our county (Stillwater), we doubt that any agency would sponsor a controlled groundwater petition as SB120 requires, mainly because our county was sued by the developer of Crow Chief Meadows when the subdivision was first proposed and denied by the county. Our county government is extremely fearful of lawsuits and will do almost anything to avoid them. We believe other county and state governmental entities will

react similarly. By removing citizens from the petition process, DNRC will be successful in eliminating citizen dependence on the agency to actually do their job and continue the erosion of the prior appropriation doctrine and senior water rights in general.

\*SB120 seeks to restrict a controlled groundwater study in a temporary designation\* \*to measurement, water quality testing and reporting only.\* No mention is made of drilling and equipping monitoring wells or pump tests, both necessary in determining whether a temporary designation should be converted to a permanent one. It's as if the agency wants to avoid any meaningful discussion of hydrological reality, including inevitable water shortages and disputes over water rights.

\*SB120 requires that temporary controlled groundwater studies "must be prioritized for funding" \*under the renewable resource grant and loan program. While this sounds great, what happens if the funding isn't available? Does the groundwater study get canceled or postponed? If people didn't need water, that might be acceptable. Water is a necessity and should therefore be treated with commensurate priority.

The controlled groundwater law is the last hope for people who have legitimate concerns about water availability for the long term. Isn't it DNRC's job to determine if those concerns have validity, if measures should be taken to limit future appropriations and then to act accordingly? SB120 does nothing to ease those concerns and simply serves the agency. If anything, the controlled groundwater law should revert back to MCA 2001 or 2003. Our CGA hearing in 2003 was a science based, fact finding meeting between us (as petitioners) and the developer of the subdivision. Based on the scientific facts presented at the hearing, the DNRC hearing examiner granted a temporary designation. We weren't represented by an attorney at the hearing nor was there any requirement to have one. The format was straightforward and clear. That's the way these hearings should be, as should all other aspects of the controlled groundwater law. Unfortunately, our first hearing went well and after that, DNRC began a transition to what can only be described as water management in the strictest legal sense. Passage of SB120 will complete this transition. We urge you to vote "no" on SB120.

Sincerely,

Polly Rex  
Horse Creek Water Users, Inc.  
P.O. Box 68  
Absarokee, MT 59001  
(406) 328-4413

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